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7 JACKSON FAMILY WINES, INC.,
8 Plaintiff,
9 v.
10 ZURICH AMERICAN INSURANCE
11 COMPANY,
12 Defendant.

Case No. [22-cv-07842-AMO](#) (DMR)

**ORDER ON PLAINTIFF'S MOTION
TO COMPEL**

Re: Dkt. No. 75

13 The parties filed a joint discovery letter in which Plaintiff Jackson Family Wines, Inc.
14 (“JFW”) moves to compel Defendant Zurich American Insurance Company (“Zurich”) to produce
15 documents in response to one request for production (“RFP”). [Docket No. 75.] This matter is
16 suitable for determination without oral argument. Civ. L.R. 7-1(b). For the following reasons, the
17 motion to compel is granted.

18 **I. BACKGROUND**

19 This is a breach of insurance contract and bad faith action. JFW is “a family owned-
20 business that owns and operates dozens of vineyards and wineries throughout California.” It
21 alleges that it purchased three insurance policies from Zurich that together provided \$1.1 billion in
22 coverage. JFW alleges that it “suffered substantial property and other damage from four wildfires
23 that occurred in the three different policy terms” in Napa and Sonoma Counties. It submitted four
24 fire-related claims totaling over \$430 million. JFW alleges that Zurich has deliberately delayed
25 the four claims to “avoid paying tens of millions of dollars in coverage that is clearly owed” under
26 the policies. Compl. ¶¶ 1, 2, 10, 11. JFW brings claims for breach of the three insurance
27 agreements, breach of the implied covenant of good faith and fair dealing, and declaratory relief,
28 and seeks punitive damages.

1 JFW now seeks to compel Zurich to respond to RFP No. 26. The RFP requests “all
2 documents relating to any communications between Zurich and any reinsurer relating to the
3 policies.” Jt. Letter Ex. A. JFW narrowed the request to “communications between Zurich and
4 any reinsurer relating to JFW’s four fire claims.” Jt. Letter 1.

5 **II. LEGAL STANDARD**

6 Federal Rule of Civil Procedure 26 provides

7 Parties may obtain discovery regarding any nonprivileged matter that
8 is relevant to any party’s claim or defense and proportional to the
9 needs of the case, considering the importance of the issues at stake in
the action, the amount in controversy, the parties’ relative access to
relevant information, the parties’ resources, the importance of the
discovery in resolving the issues, and whether the burden or expense
10 of the proposed discovery outweighs its likely benefit.

11 Fed. R. Civ. P. 26(b)(1). “Information within this scope of discovery need not be admissible in
evidence to be discoverable.” *Id.* “Relevancy, for the purposes of discovery, is defined broadly,
12 although it is not without ultimate and necessary boundaries.” *Gonzales v. Google, Inc.*, 234
13 F.R.D. 674, 679-80 (N.D. Cal. 2006). “While the party seeking to compel discovery has the
14 burden of establishing that its request satisfies relevancy requirements, the party opposing
discovery bears the burden of showing that discovery should not be allowed, and of clarifying,
15 explaining, and supporting its objections with competent evidence.” *Lofton v. Verizon Wireless*
16 (*VAW*) LLC, 308 F.R.D. 276, 281 (N.D. Cal. 2015) (citing *La. Pac. Corp. v. Money Mkt. I*
17 *Institutional Inv. Dealer*, 285 F.R.D. 481, 485 (N.D. Cal. 2012)).

18 **III. DISCUSSION**

19 Zurich made several objections to RFP No. 26 as originally written. It objects to the
narrowed request for “communications between Zurich and any reinsurer relating to JFW’s four
20 fire claims” based on relevance. Zurich also argues that the requested communications contain
“confidential financial and other information.” Jt. Letter 4, 6.

21 “Reinsurance is a special form of insurance obtained by insurance companies to help
22 spread the burden of indemnification.” *Catholic Mut. Relief Soc. v. Superior Court*, 42 Cal. 4th
23 358, 368 (2007) (cleaned up). “A reinsurance is presumed to be a contract of indemnity against
liability, and not merely against damage.” Cal. Ins. Code § 621. The California Supreme Court

1 has held that “[b]ecause a contract of reinsurance is defined by statute as a contract of indemnity
2 made for the benefit of the liability insurer, as a general matter it has no relevance in an underlying
3 tort action brought against an insured under the policy of liability insurance.” *Catholic Mut.*, 42
4 Cal. 4th at 368 (discussing Cal. Ins. Code §§ 620, 621). Nonetheless, the court noted that
5 “reinsurance agreements may be discoverable . . . within the sound discretion of the trial court”
6 where the “reinsurance agreements themselves were in dispute or were otherwise directly at issue
7 or relevant to the litigation at hand.” *Id.* at 368 n.7. The court discussed *Lipton v. Superior Court*,
8 48 Cal. App. 4th 1599, 1617-18 (1996), in which the court “approved of the discovery of an
9 insurer’s reinsurance information . . . because the insurer was the defendant in a bad faith action,
10 and the reinsurance information was directly relevant to the issues in that proceeding,” noting that
11 *Lipton* limited discovery to “unprivileged communications between the insurer and reinsurer
12 concerning coverage issues and potential liability[.]” *Id.*

13 Here, JFW notes that it seeks only communications between Zurich and its reinsurers
14 about the four fire claims and contends that such communications are relevant for two reasons.
15 First, JFW argues that the requested communications are probative of Zurich’s state of mind with
16 respect to the four fire claims, including Zurich’s assessment of its obligations on the claims and
17 valuation of the losses, the adequacy of its investigation, and “whether Zurich acted contrary to its
18 own assessment to minimize its payments.” Jt. Letter 1. JFW asserts that Zurich’s state of mind is
19 relevant to both the bad faith claim, which requires JFW to “establish that Zurich unreasonably
20 withheld payments due under the policies,”¹ and the request for punitive damages, which requires
21 a showing of oppression, fraud, or malice. *Id.* (citations omitted; emphasis removed) (citing Cal.
22 Civ. Code § 3294(a)). JFW points to its allegation that “Zurich has engaged in a deliberate
23 campaign to delay the four open fire claims and avoid paying tens of millions of dollars in
24 coverage that is clearly owed under the three insurance policies that JFW purchased.” *Id.* (citing
25 Compl. ¶ 2).

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¹ “[T]o establish [an] insurer’s ‘bad faith’ liability, the insured must show that the insurer has (1)
28 withheld benefits due under the policy, and (2) that such withholding was ‘unreasonable’ or
‘without proper cause.’” *Major v. W. Home Ins. Co.*, 169 Cal. App. 4th 1197, 1209 (2009).

1 Relatedly, JFW argues that the requested communications could also show “how and why
2 Zurich’s state of mind shifted over time,” which it claims “may evidence bad faith.” Jt. Letter 2.
3 For example, JFW alleges that Zurich originally paid for removal of fire-damaged trees under one
4 of the three policies and later reversed its position and denied coverage for the same expenses. *Id.*
5 It argues that Zurich’s communications with its reinsurers may bear on whether it “unreasonably,
6 and possibly with malice, reversed its coverage position to withhold payments it owed.” *Id.*

7 Second, JFW argues that the communications are relevant to the parties’ dispute regarding
8 coverage. JFW alleges that Zurich breached the insurance policies “by not paying JFW’s covered
9 losses.[]” Jt. Letter 1. The parties dispute the scope of coverage under the policies, including
10 whether the policies cover certain destroyed structures and removal of fire-damaged trees. *Id.*
11 (citing Compl. ¶¶ 56, 65, 125, 126). JFW argues that communications between Zurich and its
12 reinsurers “may reveal that [Zurich] agrees with JFW’s interpretation of the policies to provide full
13 coverage for these losses.” *Id.*

14 Zurich disputes the relevance of the communications. With respect to its state of mind,
15 Zurich argues that “the best evidence of how Zurich handled JFW’s claim is” Zurich’s claim file,
16 which it already produced. Jt. Letter 5. As to the parties’ coverage dispute, Zurich argues that the
17 requested communications are “immaterial” to “interpretation of policy terms” and that “parol
18 evidence is inadmissible to contradict clear and explicit policy terms.” *Id.* at 5, 6. Zurich also
19 argues that JFW “misapplies” the key case on which it relies, *Lipton*. *Id.* at 5, 6.

20 Contrary to Zurich’s position, *Lipton* supports that communications between an insurer and
21 its reinsurers may be relevant and discoverable in a bad faith action. In *Lipton*, the insured sought
22 discovery of his insurer’s reinsurance agreements along with “related correspondence regarding the
23 adjustment and defense” of the underlying cases which the insurer may have sent to its reinsurers.
24 48 Cal. App. 4th at 1616. The insured argued that such “reinsurance information” was “relevant
25 to explaining the definition of ‘single’ versus ‘aggregate’ claims,” where the insured asserted that
26 he was entitled to aggregate claim coverage and suggested that the insurer sought reinsurance
27 based on its knowledge or belief that it might owe aggregate coverage benefits to the insured. *Id.*
28 at 1607-08, 1616. The court found that the argument was based on a misunderstanding of “the

1 fundamental purpose and function of reinsurance” because the insurer’s “entry into reinsuring
2 agreements would not have occurred in response to the existence of a pending claim, but would
3 necessarily have occurred prior to the claim.” *Id.* at 1616 (emphasis removed). It determined that
4 reinsurance documents were not relevant to the issue of whether there was “single” or “aggregate”
5 coverage. *Id.* at 1616-17. However, the court clarified that it was *not* holding that “all documents
6 containing re-insurance information are irrelevant to the subject matter of the lawsuit and are not
7 calculated to lead to the discovery of admissible evidence.” It held that “correspondence between
8 the insurer and re-insurer, not otherwise privileged, which discusses liability, exposure, the
9 likelihood of a verdict in excess of policy limits or coverage issues may well be relevant in
10 discovery.” *Id.* at 1617-18.

11 Following *Lipton*, numerous cases in the Ninth Circuit have concluded that reinsurance
12 communications are relevant to issues such as the state of mind of an insurer regarding claim
13 valuation and the potential for coverage, whether the insurer conducted a proper investigation, and
14 the insurer’s understanding of coverage issues. *See, e.g., Scripps Health v. Nautilus Ins. Co.*, No.
15 21-CV-1634-AJB (WVG), 2022 WL 18781312, at *5 (S.D. Cal. Dec. 13, 2022) (concluding that
16 communications between insurer and re-insurers regarding plaintiff’s claims for coverage were
17 relevant and discoverable because they “may reveal Defendant’s candid evaluation of Plaintiff’s
18 claim at different stages of the underlying litigation” and “could provide insight as to Defendant’s
19 state of mind regarding the valuation of Plaintiff’s claim, as well as information as to whether
20 Defendant conducted a proper investigation into Plaintiff’s claim.”); *Whispering Winds Catholic*
21 *Conf. Center, Inc. v. Markel Ins. Co.*, No. 05-CV-1911-JED (JMA), 2006 WL 8455454, at *3
22 (S.D. Cal. Oct. 26, 2006) (holding that communications between insurer and reinsurer regarding
23 plaintiff’s claim were relevant to the insurer’s “state of mind regarding the valuation” of the claim
24 and whether the defendant “conducted a proper investigation” into the claim, and noting that
25 “information expressing an opinion or stating a position as to an insurer’s interpretation of a policy
26 at issue could be relevant” (quotation marks and citation omitted)); *Northrop Grumman Corp. v.*
27 *Factory Mut. Ins. Co.*, No. CV 05-8444-DDP (PLAx), 2007 WL 9627647, at *3 (C.D. Cal. Jan. 3,
28 2007) (holding that communications between insurer and reinsurer regarding policies issued to

1 plaintiff covering losses in dispute were relevant as they “may show defendant’s understanding of
2 the perils covered by the policy at issue” where the parties disputed an exclusion); *Hana Fin., Inc.*
3 v. *Foremost Signature Ins. Co.*, No. CV 17-02770 RGK (JEMx), 2017 WL 8241977, at *1 (C.D.
4 Cal. Nov. 22, 2017) (“[c]ase authority . . . supports the relevance of reinsurance documents in bad
5 faith litigation”). Zurich does not meaningfully distinguish these cases and instead urges the court
6 to follow *Flintkote Company v. General Accident Assurance Co. of Canada*, No. C 04-01827
7 MHP, 2009 WL 1457974, at *5 (N.D. Cal. May 26, 2009). In *Flintkote*, the court distinguished
8 the case from *Lipton* and denied discovery of unspecified “reinsurance information” without
9 prejudice to the plaintiff renewing the request if it could “show that the reinsurance agreements are
10 in issue.” *Id.* at *6. However, the court did not discuss the relevance of communications between
11 an insurer and reinsurers to the insurer’s state of mind or address *Lipton*’s holding that such
12 communications may be relevant to a bad faith claim.

13 The court concludes that the requested communications are relevant to JFW’s claims in
14 this case, where it alleges that Zurich has unreasonably withheld benefits due under the insurance
15 policies and that Zurich is liable for punitive damages due to oppression, fraud, or malice.
16 Zurich’s state of mind is therefore at issue, and its communications with reinsurers may be
17 probative of its state of mind. Additionally, the requested communications may bear on the
18 parties’ coverage dispute. Contrary to Zurich’s argument about the admissibility of parol
19 evidence, information within the scope of Rule 26 “need not be admissible in evidence to be
20 discoverable.” Fed. R. Civ. P. 26(b)(1).

21 As noted, Zurich also argues that the requested communications contain “confidential
22 financial and other information.” Jt. Letter 6. However, it does not explain why the protective
23 order in place is insufficient to address its confidentiality concerns. [See Docket No. 45.]
24 Accordingly, “communications between Zurich and any reinsurer relating to JFW’s four fire
25 claims” are relevant and discoverable.

26 Zurich contends that it withheld responsive communications “according to privilege, . . .
27 the confidentiality inherent to reinsurance, and others on grounds of both privilege and
28 confidentiality” and indicated the same on its privilege log. Jt. Letter 6. Zurich shall produce any

1 responsive communications withheld solely on a reinsurance-based objection, including the claim
2 of “confidentiality inherent to reinsurance,” within seven days of the date of this order. This
3 discovery may be produced pursuant to the protective order. By the same date, Zurich shall
4 produce an amended privilege log in accordance with the undersigned’s February 7, 2024 Notice
5 of Reference and Order re: Discovery Procedures (Docket No. 58).

6 **IV. CONCLUSION**

7 For the foregoing reasons, JFW’s motion to compel is granted.

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9 **IT IS SO ORDERED.**

10 Dated: July 8, 2024

